

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIA DE LA O, et al.,
Plaintiffs,

v.

ROBIN ARNOLD-WILLIAMS, et al.,
Defendants.

NO. CV-04-0192-EFS

**ORDER ON PLAINTIFFS'
MOTION FOR PROTECTIVE
ORDER RE TAX RETURNS AND
IMMIGRANT STATUS & TOWN OF
MATTAWA DEFENDANT'S MOTION
TO COMPEL**

MARIA FERNANDEZ, et al.,
Plaintiffs,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES, et al.,
Defendants.

[NO. CV-05-0280-EFS]

A hearing was held in the above-captioned matters on October 16, 2006. Plaintiffs in *De La O* were represented by Joshua Alex and Kay Frank, while Ty Duhamel appeared on behalf of the *Fernandez* Plaintiffs. John McIlhenny appeared on behalf of Defendants State of Washington and state agents ("State Defendants"), and Jerry Moberg represented Defendants Town of Mattawa and agents ("Town of Mattawa Defendants").

1 Before the Court were Plaintiffs' Motion for Protective Order Re Tax
2 Returns and Immigrant Status (Ct. Rec. 223) and Town of Mattawa's Motion
3 to Compel (Ct. Rec. 234). After reviewing the submitted materials and
4 applicable law and hearing oral argument, the Court is fully informed.
5 As set forth below, the Court grants Plaintiffs' motion and denies
6 Defendants' motion in general.

7 **A. Tax Returns**

8 After conducting the following two-pronged analysis, the Court
9 finds a protective order preventing the disclosure of tax returns is
10 necessary under Federal Rule of Civil Procedure 26(c) at this time: (1)
11 whether the tax returns are relevant to the subject matter of the action,
12 and (2) whether there is a compelling need for the tax returns because
13 the information contained therein is not otherwise readily available.
14 *See Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal.
15 2006); *Aliotti v. Vessel Senora*, 17 F.R.D. 496, 497-98 (N.D. Cal. 2003);
16 *see also Premium Serv. Corp v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229
17 (9th Cir. 1975). First, the Court finds the tax returns are only
18 relevant as to the three *Fernandez* Plaintiffs who are requesting lost
19 income damages - Maria Chavez, Carmela Ramirez, and Maria Fernandez. *See*
20 *Williams v. Bd. of County Comm'rs of the Unified Gov't of Wyandotte*
21 *County & Kansas City, Kansas*, 192 F.R.D. 698, 705 (D. Kan. 2000). Given
22 the facts and circumstances of this case, the tax returns are not
23 relevant for any other purpose proposed by Defendants.

24 The second prong of the analysis requires the Court to determine
25 whether there is a compelling need for the tax returns for these three
26 Plaintiffs because the information contained therein is not otherwise

1 readily available. See *Farber*, 234 F.R.D. at 191. Under this prong, the
2 emphasis is on whether there is another means by which Defendants can
3 obtain such information. See *Farber*, 234 F.R.D. at 191. In Plaintiffs'
4 Reply (Ct. Rec. 267), Plaintiffs state:

5 Mattawa defendants could focus discovery regarding the decline
6 in the number of children in care or the decline in plaintiffs'
7 incomes, mitigation, and business expense/deduction
8 information. Plaintiffs' counsel notified defense counsel
repeatedly that the three Fernandez plaintiffs were willing to
provide additional income information and/or documents
voluntarily.

9 (Ct. Rec. 267 at 6.) In reliance upon these three Plaintiffs'
10 willingness to provide documentation and/or answer interrogatories
11 regarding their business income and expenses, and components of such,
12 during the relevant time periods, the Court finds Defendants have access
13 to the information they seek from a source other than federal tax
14 returns. See *Aliotti v. Vessel Senora*, 17 F.R.D. 496, 497-98 (N.D. Cal.
15 2003); see also *Cooper v. Hallgarten & Co.*, 34 F.R.D. 482 (S.D.N.Y.
16 1964); see e.g. *Farber*, 234 F.R.D. at 191. Such information will allow
17 Defendants to investigate any potential basis for changes in income, such
18 as increased expenses, changes in overhead, etc., without Plaintiffs
19 needing to disclose their tax returns. This decision "assure[s] a
20 balance between the liberal scope of discovery and the policy favoring
21 the confidentiality of tax returns." *Farber*, 234 F.R.D. at 191.
22 Accordingly, the Court finds there is not a compelling need for
23 Plaintiffs to disclose their tax returns.

24 **B. Immigration Status**

25 Plaintiffs also ask the Court to restrict disclosure of their
26 immigration status on the grounds that such information is irrelevant to

1 their claims and production of such information will potentially
2 discourage litigants from pursuing civil rights claims. Defendants
3 respond that such information is relevant because Plaintiffs' credibility
4 needs to be assessed by the jury. State Defendants also maintain
5 Plaintiffs' immigration status is relevant because, if they are illegally
6 in the United States, *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 535
7 U.S. 137 (2002), provides that they can not claim lost income.

8 First, the Court finds the circumstances of this lawsuit to be more
9 similar to those in *Rivera v. NIBCO, Inc.*, 364 F.3d 1057 (9th Cir. 2004),
10 rather than *Hoffman*. Although the Ninth Circuit did not ultimately
11 decide whether *Hoffman* was applicable to the facts at hand in *Rivera*, the
12 Ninth Circuit took the opportunity to explain that *Hoffman* likely did not
13 apply because the two cases dealt with different federal statutes and the
14 plaintiffs in *Rivera* were seeking back pay for work they had actually
15 performed, unlike the employee in *Hoffman* who was seeking back pay for
16 work that was not actually performed. *Rivera*, 364 F.3d at 1066-69; see
17 also *Galaviz-Zamora v. Brady Farms, Inc.*, 230 F.R.D. 499 (W.D. Mich.
18 2005). Here, although Plaintiffs are seeking lost income, they have
19 brought a civil rights action like the plaintiffs in *Rivera*, rather than
20 an action under the National Labor Relations Act as was brought in
21 *Hoffman*. The Court finds compelling the concern, as recognized in
22 *Rivera*, that requiring the Plaintiffs to disclose their immigration
23 status would cause a chilling effect on similar civil rights actions.
24 *Rivera*, 364 F.3d at 1064-65; see also *EEOC v. BICE of Chicago*, 229 F.R.D.
25 581 (N.D. Ill. 2005). Therefore, the Court does not find *Hoffman*

1 controlling. Accordingly, Plaintiffs' immigration status is not relevant
2 to the issue of lost income.

3 Defendants also argue they need to know the immigration status of
4 Plaintiffs in order to show that the investigation into Plaintiffs was
5 based on legitimate police concerns of criminal conduct and to challenge
6 Plaintiffs' credibility. The Court concludes Plaintiffs' immigration
7 status has little, if any, relevance to either of these issues. First,
8 Defendants will need to show that a legitimate police concern existed at
9 the time of the investigation not by evidence obtained through later
10 discovery. Second, as to credibility, any relevance the Plaintiffs'
11 immigration status might have as to their credibility is outweighed by
12 the damage and prejudice to Plaintiffs if disclosure was required. See
13 *Galaviz-Amora v. Brady Farms*, 230 F.R.D. 499, 502 (W.D. Mich. 2005).

14 Accordingly, due to both the chilling effect discussed above and the
15 outstanding federal grand jury, the Court finds Plaintiffs satisfied
16 their burden of showing good cause by demonstrating harm or prejudice
17 that would result if they were forced to disclose their immigration
18 status. See *Rivera*, 364 F.3d at 1063. For these reasons, Defendants are
19 not entitled to conduct discovery into Plaintiffs' immigration status.

20 **C. Social Security Numbers and "Other Identifying Information"**

21 For the same reasons the Court finds Plaintiffs' immigration status
22 is protected, the Court finds Defendants are not entitled to ask
23 Plaintiffs to disclose their social security numbers. Plaintiffs also
24 ask the Court to prohibit Defendants from seeking "other identifying
25 information." The Court finds this request is too broad. In fact, the
26 Court finds Defendants are entitled to ensure that Plaintiffs are who

1 they say they are. Therefore, Defendants are entitled to ask a Plaintiff
2 her name and birth date. In addition, the Court notes that Defendants
3 have access to the identifying information that each Plaintiff supplied
4 at the time she obtained her license.

5 For the above given reasons, **IT IS HEREBY ORDERED:**

6 1. Plaintiffs' Motion for Protective Order Re Tax Returns and
7 Immigrant Status (**Ct. Rec. 223**) is **GRANTED** in so far as Defendants are
8 not entitled to conduct discovery into Plaintiffs' (or their husbands,
9 children, relatives, and assistants) tax returns, immigration status, or
10 social security numbers.

11 2. Town of Mattawa's Motion to Compel (**Ct. Rec. 234**) is **DENIED**.
12 **IT IS SO ORDERED.** The District Court Executive is directed to file
13 this Order and provide copies of this Order to counsel.

14 **DATED** this 20th day of October 2006.

15
16 S/ Edward F. Shea
17 EDWARD F. SHEA
United States District Judge

18 Q:\Civil\2004\0192.protorder.taxret.wpd
19
20
21
22
23
24
25
26